

Rudd can get moving on Kyoto ratification

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When Kevin Rudd heads to Bali next week for the UN climate conference he will want the wheels to be in motion on a key election promise – Australian ratification of the Kyoto Protocol. Regrettably, no matter how quickly the Rudd Government acts, there is no way we can join the Kyoto club until around March 2008. Under the terms of Kyoto, it will only take effect for Australia 90 days after the government deposits the "instrument of ratification" with the UN.

Professor Don Rothwell argued in Crikey yesterday that even getting to this stage would involve some headaches for the Rudd Government because of the Australian treaty-making process. However, there appears to be no real obstacle to getting the documentation in the diplomatic bag as soon as the new cabinet is sworn in.

The first step in hitching Australia to Kyoto was taken back in 1998 when the Howard Government signed the agreement. Kyoto was subsequently repudiated by John Howard so none of the ordinary procedures for treaty making were activated. What normally follows treaty signature is preparation of a National Interest Analysis, the tabling of the treaty in Parliament, review of the treaty by the Joint Standing Committee on Treaties, the passage of legislation implementing the treaty and, finally, ratification by the Executive.

These steps are there so that there is Parliamentary review of proposed treaty action. However, the Kyoto Protocol is now a special case. It has been debated endlessly in the Parliament over the last decade, Kyoto ratification was one of Labor's main election promises and it now appears to enjoy bipartisan support. These are compelling reasons for sidelining procedural niceties and there is a mechanism for doing so.

The Constitution gives the Executive, not the Parliament, formal authority to enter into treaties. And under the treaty-making procedures reformed by the Howard Government, the Executive reserved the right to ratify a treaty immediately if it is particularly urgent or sensitive and involves significant commercial, strategic or foreign policy interests. The Kyoto Protocol is just such a treaty.

The custom that ratification should not proceed until legislation is in place is a more substantial objection to immediate ratification of Kyoto. This penultimate step in the treaty-making process is there to safeguard Australia from breaching its international obligations by not giving domestic effect to a ratified treaty. Thankfully, in the case of Kyoto, this is not a problem as Australia can comply with the agreement for the time being without any new law.

Australia is roughly on track to meet its absurdly generous Kyoto emissions limitation target and there are already arrangements in place for collecting and reporting Australia's emissions to the UN. Kyoto imposes few other requirements needing legislation. The only possible downside to not having a Kyoto law is Australian companies may not be able to take immediate advantage of some of the carbon trading opportunities offered by Kyoto.

It will be necessary to embark on a program of climate law reform if the Rudd Government is to discharge Australia's international obligations fully and cut our greenhouse gas emissions. While work on this could conceivably be delayed until the complexion of the Senate changes in July 2008, there is no reason to wait for a climate law to be drafted and hit the books before Australia restores its international reputation by ratifying Kyoto and getting behind international efforts to address climate change.